IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9170 OF 1994
With
CIVIL APPLICATION NO. 3379 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHIVSHAKTI COOPERATIVE HOUSING SOCIETY (PROPOSED) & ORS. - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
MR. B.M. MANGUKIYA for Petitioner(s) : 1.
MS. BANNA S. DUTTA for Petitioner(s) : 2 - 3.
MR. A.Y. KOGJE, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/01/2007

ORAL JUDGMENT

1. By this Writ Application under Article 226/227 of the Constitution of India, the petitioners seek to challenge the correctness, validity and propriety of the Order passed by the Collector on 7th

December, 1992 annexed with the counter affidavit as Annexure-B, and Order dated 26th April, 1994 passed by the Secretary (Appeals), Revenue Department, in No. SRD/Land/Ahd/1/93, whereunder the Collector had cancelled the allotment and directed resumption of the land, and the Secretary has rejected the revision holding that as the said order passed by the Collector has been confirmed and approved by the State Government, the Secretary would not be entitled to hear and decide the appeal.

2. The facts necessary for disposal of the present Writ Application are that petitioner No.1 - Shivshakti Cooperative Housing Society, a proposed Cooperative Housing Society, made an application to the State Government for allotment of a piece of land for use and occupation for residential purpose by its members. The State Government approved the application *vide* its letter No. JMM/1683/5950/A dated 10th January, 1985 and yet another letter dated 11th March, 1988. In accordance with the order and wishes of the Government, the land in dispute was allotted to the proposed housing society *vide* Collector's order dated 8th August, 1989 in Case No. CB/ LND/1/K.1267.

2.1 Various conditions were attached to the order of allotment. After finding that the petitioners have committed breach of some of the conditions, the Collector - Ahmedabad issued a notice to petitioner No.1/proposed housing society to show cause as to why the allotment be not cancelled and the property be not resumed by the Government or be not forfeited by the Government. The notice was numbered as CB/LND-1/3839. The petitioner No.1 filed its reply, but, the Collector, after holding that petitioner No.1 had committed number of lapses and breaches, cancelled the Order dated 8th August, 1989 and directed resumption/forfeiture of the land. Being aggrieved by the said order, the petitioner No.1 had filed a revision, which was dismissed by the Secretary

(Appeals) as not maintainable. The petitioners are now before this Court.

3. During the pendency of this Writ Application, Civil Application No.10327 of 2006 and Civil Application No.10329 of 2006 were filed. The said applications for intervention were allowed on 15th November, 2006 and the said applicants were joined as party petitioner Nos.2 and 3.

4. Shri Mangukia, learned Counsel for petitioner No.1, submits that the order passed by the Collector was patently illegal because he could not cancel the allotment and if that is so, then, the order be quashed. His further submission is that the revision filed by petitioner No.1 could not be dismissed on the ground that the order passed by the Collector has already been approved and confirmed by the State Government. His submission is that the State Government if was to cancel the order, which was to lead to civil consequences, then, petitioner No.1 was entitled to be heard. His further submission is that without affording an opportunity of hearing, the State Government could not direct cancellation of the allotment and resumption/forfeiture of the land.

5. Ms.Banna Datta, learned Counsel for petitioner Nos.2 and 3, so also for the intervenors, submitted that they are the members of petitioner No.1, who have been alloted some land for residential purpose. Her submission is that for the lapses committed by petitioner No.1, the other petitioners cannot be allowed to suffer.

6. Shri A. Y. Kogje, learned Counsel for the State, on the other hand, submitted that the allotment was conditional one and if the conditions were not adhered to or were not observed in their true spirit, then, the Collector or the State Government were entitled to make the order of cancellation. He also submits that undisputedly, number of

breaches have been committed and present would be a case of fraud because the petitioner No.1 made the application as a proposed Housing Society, but, till date did not get it self registered as a Housing Society. He submits that in view of the breaches, which are otherwise admitted, the petition deserves to be dismissed because while exercising powers under Article 226 of the Constitution of India, the Court, by setting aside the illegal order (as alleged), would not allow a void action to revive.

7. The State government had made certain recommendations in their letters dated 10th January, 1985 and 11th March, 1988; the State Government required the Collector to make allotment in favour of present petitioner No.1, an order of allotment, in fact, was made by the Collector and while making the allotment, he had imposed/fixed certain conditions. Condition No.1 was that the land in dispute would be used for residential purposes only; Condition No.5 was to show that the land would not be transferred without permission of the Collector of the district; Condition No.6 provided that if some breach is committed, then, on a notice, the mistakes/lapses were required to be rectified and in case of non-rectification, the land would go back to the State Government; Condition No.11 provided that the persons, who were occupying some piece of the land and were also members of the society, would not be required to surrender the possession; Condition No.12 clearly provided that the allottee would not be entitled to mortgage, sell, gift, transfer or alienate the land in any other manner; and, Condition No.13 provided that if any of Conditions Nos.1 to 12 was violated, then, the State would be entitled to enter upon the land.

8. It is not in dispute before me that till date, petitioner No.1 is not registered as a Cooperative Housing Society. If it made an application somewhere in the year 1984/1985 as a proposed society, then, at least upto the year 1989 when the Collector cancelled the order of allotment and

directed resumption of the land, it should have got itself registered as a Cooperative Housing Society. The petitioner No.1 as on today would be taken to be a group of persons, which is represented by its Chairman, Shri C.M. Parmar. Under the law, a group of persons can be represented by a person if other persons authorise such person to act in the representative capacity. The petitioner No.1 certainly could not sue and be sued in its own name, therefore, petitioner No.1, even through Shri C.M. Parmar (since deceased), could not file the Writ Application. It is not contended before me that petitioner No.1 if is not a registered Cooperative Housing Society, then, it is a registered society under the provisions of the Societies Registration Act or a partnership firm under the provisions of the Partnership Act. A number of persons cannot authorise somebody to file a petition or bring a cause before the Court in the representative capacity.

9. Shri Kogje is certainly justified in submitting that right from the inception, the petitioner No.1 through its Chairman or other persons, simply wanted to play fraud by obtaining the allotment because they never intended to get themselves registered as a Cooperative Housing Society.

10. It is not in dispute before me that despite Condition No.1, the land's use has been converted from residential to commercial, as number of shops have been constructed over the property. Till date, the shops are standing, but, the breach has not been repaired nor the wrong has been rectified. Condition No.5 again has been violated because undisputedly from the statements of petitioner Nos.2 and 3 and from the application of the proposed intervenors, it would clearly appear that the land has been transferred in favour of these persons and number of others, either by sale or by charging some money though the sale or transfer could be effected only after seeking permission from the competent authority, which would be the Collector in the present case.

11. Condition No.6 also had been violated because even after receiving the notice to show cause, the petitioner No.1 did not repair the wrong or rectify the mistake. Condition No.11 is not required to be considered because it has no material bearing on the subject. Condition No.12 undisputedly has been violated because Condition No.12 directed that no sale shall be effected, while sale has undisputedly been effected by petitioner No.1. If these are the lapses on the part of and breaches committed by the petitioner, then, the Collector, who had alloted particular land and settled the same in favour of petitioner No.1, was certainly justified in holding that in view of breaches committed by petitioner No.1, the State was entitled to enter upon the land and resume the possession. Assuming the order of the Collector has been confirmed by the State Government without affording an opportunity of hearing to the petitioners and the Secretary (Appeals) had dismissed the revision petition as infructuous, then too, the petitioners would be obliged to inform this Court that why the order passed by the Collector is bad if the present petition is to be taken to be a petition against the order passed by the Collector. No allegations have been made against the order of the Collector that he acted in a high handed manner.

12. The submission of Shri Mangukia that the Collector had no authority to cancel the allotment, is misconceived and is an argument of frustration because the State Government had simply made recommendations to the Collector for allotment of the land and the Collector, in his capacity as an administrative head of the district, had issued the order of allotment.

13. The petitioner Nos.2 and 3 and the intervenors have purchased the property as members of petitioner No.1. I have already held that the petitioner No.1 would be taken to be a group of persons and such group of persons cannot be represented by only one person. The petitioner

Nos.2 and 3, so also the intervenors, are claiming their right, title and interest from petitioner No.1 and if petitioner No.1 had committed number of breaches and made itself liable for an order adverse to its interest, then, any person, who derives title from petitioner No.1, would have to suffer the brunt of the consequences.

14. Taking into consideration the totality of the circumstances and that not only conditions of allotment were violated but till date the said breaches stare in the eyes of everybody, I am of the opinion that in view of the defiance shown by the petitioner No.1, the petitioner No.1 is not entitled to any relief from this Court. The petitioner Nos.2 and 3 and the intervenors would also not be entitled to any relief from this Court except liberty in their favour to make an application to the State government that they have raised their constructions after spending a good fortune, therefore, that particular piece of land may be settled in their favour either on the market price or on some premium.

15. The petition is, accordingly, dismissed with costs of Rs.5,000/-, to be paid by petitioner No.1 to the State Government. Interim relief stands vacated. It is expected of the State Government and the Collector, Ahmedabad that they would immediately enter upon the land and would not allow the illegality to perpetuate.

16. The applicants of Civil Application Nos.10327 of 2006, 10329 of 2006 and 3379 of 2006 have already been heard as intervenors, Civil Application No.3379 of 2006 stands disposed of.

[R.S.Garg, J.]

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